

THE HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,
vs.
MOTOROLA, INC., et al.,
Defendants.

Case No. C10-1823-JLR

DECLARATION OF CHRISTOPHER
WION

MOTOROLA MOBILITY LLC, et al.,
Plaintiffs,
vs.
MICROSOFT CORPORATION,
Defendants.

I, Christopher Wion, hereby declare as follows:

1. I am an attorney at the law firm of Calfo Harrigan Leyh & Eakes LLP, one of the law firms representing Microsoft Corporation (“Microsoft”) in the above-captioned matter, and have personal knowledge of the facts stated herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of the July 31, 2013 Amended Expert Witness Report of Microsoft’s expert, Todd D. Menenberg (the “Amended

1 Menenberg Report”), which shows in red-line the changes made to Mr. Menenberg’s original
2 May 29, 2013 Expert Witness Report (the “Original Menenberg Report”).

3 3. The Amended Menenberg Report reflects that the total amount of legal fees
4 Microsoft seeks in connection with services provided by Sidley Austin, LLC (“Sidley”) has
5 been reduced by approximately \$5 million from the amount identified in the Original
6 Menenberg Report. As reported in the Original Menenberg Report, the Sidley fees addressed
7 therein were based on 48 Sidley invoices. As reported in the Amended Menenberg Report, the
8 Sidley fees addressed therein were based on only 38 Sidley invoices.

9 4. By letter dated July 19, 2013 (Dkt. 755), Microsoft notified the Court that it had
10 decided not to seek recovery for certain legal fees referenced in the Original Menenberg Report
11 and associated with invoice entries that had been color-coded to indicate the proportion of
12 Sidley’s work related to Motorola’s H.264 or 802.11 standard-essential patents (“SEPs”) as
13 compared to Motorola’s non-SEPs. As noted in the letter, this reduced Microsoft’s claim for
14 recovery of legal fees, costs and expenses by \$3,105,517. Mr. Menenberg’s original work
15 papers (which have been produced to Motorola), indicate that these fees were attributable to
16 6,767 invoice entries. The Amended Menenberg Report eliminates references to these color-
17 coded invoice entries and the associated fees, which are no longer at issue.

18 5. In addition to Sidley fees associated with the color-coded allocation described
19 above in paragraph 4, the Original Menenberg Report identified additional Sidley fees
20 associated with invoice entries that were not subject to any color-coded allocation between
21 SEPs and non-SEPs. The amount attributed to the non-allocated portion of Sidley’s fees
22 (hereafter, the “100% Entries”) in the Amended Menenberg Report is approximately \$2
23 million less than the amount reported in the Original Menenberg Report.
24
25

6. Mr. Menenberg's original work papers indicate that the non-allocated Sidney 100% Entries in the Original Menenberg Report were based on 4,938 invoice entries. Mr. Menenberg's more recent work papers (also produced to Motorola) reflect that the reduced 100% Entry portion of Sidney's fees reported in the Amended Menenberg Report is based on only 3,042 invoice entries. I understand that all of these entries were included among the original 4,938 non-allocated entries addressed in the Original Menenberg Report, with the exception of two entries that originally had been allocated at 50% (one for .5 and one for .4 hours of work by Ellen Robbins on 11/28/12, appearing on Invoice 32069908 at page 32).¹

7. The Amended Menenberg Report states that the (3,042) invoice entries associated with the reduced 100% Entry portion of Sidney's fees "were also assigned to one of three categories – 1) H.264, 2) 802.11, and 3) both H.264 and 802.11." It also states "that David Killough of Microsoft identified each of these entries as being related to Microsoft's defense of Motorola's SEP claims. He also identified each time entry as falling within each of the three categories referenced above."

8. Pursuant to the Court's direction on July 30, 2013, on July 31, 2013, Microsoft produced the specific Sidney invoices that contain the 3,042 non-allocated 100% Entries addressed in the Amended Menenberg Report. These invoices were provided with notations identifying the category (H.264, 802.11, or both H.264 and 802.11) applicable to each of the 3,042 entries. These invoices previously were produced without these notations.

9. The adjustments described above have been incorporated into the Amended Menenberg Report, including by making a corresponding downward adjustment to the total

¹ The narrative descriptions for these two time entries were not color-coded on the invoice provided to Mr. Menenberg. However, as the result of a clerical error, the *hour amounts* were coded blue, and thus Mr. Menenberg performed his calculations using a 50% allocation for these two entries. These two entries should have been previously identified as non-allocated (100%) entries.

1 amount of fees being claimed by Microsoft both in the body of the report and in supporting
2 summary exhibits.

3 10. I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct.

5 DATED this 2nd day of August, 2013 in Seattle, Washington.

6
7 s/ Christopher Wion
8 CHRISTOPHER WION
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

I, Emma Aubrey, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 2nd day of August, 2013, I caused the preceding document to be served on counsel of record in the following manner:

Attorneys for Motorola Solutions, Inc., and Motorola Mobility, Inc.:

Ralph Palumbo, WSBA #04751
Philip S. McCune, WSBA #21081
Summit Law Group
315 Fifth Ave. South, Suite 1000
Seattle, WA 98104-2682
Telephone: 206-676-7000
Email: Summit1823@summitlaw.com

_____ Messenger
_____ US Mail
_____ Facsimile
 X ECF

Steven Pepe (*pro hac vice*)
Jesse J. Jenner (*pro hac vice*)
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Telephone: (212) 596-9046
Email: steven.pepe@ropesgray.com
Email: jesse.jenner@ropesgray.com

_____ Messenger
_____ US Mail
_____ Facsimile
 X ECF

Norman H. Beamer (*pro hac vice*)
Ropes & Gray LLP
1900 University Avenue, 6th Floor
East Palo Alto, CA 94303-2284
Telephone: (650) 617-4030
Email: norman.beamer@ropesgray.com

_____ Messenger
_____ US Mail
_____ Facsimile
 X ECF

Paul M. Schoenhard (*pro hac vice*)

Ropes & Gray LLP

One Metro Center

700 12th Street NW, Suite 900

Washington, DC 20005-3948

Telephone: (202) 508-4693

Email: Paul.schoenhard@ropesgray.com

_____ Messenger

_____ US Mail

_____ Facsimile

 X ECF

Andrea Pallios Roberts (*pro hac vice*)

Brian C. Cannon (*pro hac vice*)

Quinn Emanuel Urquhart & Sullivan, LLP

555 Twin Dolphin Drive, 5th Floor

Redwood Shores, CA 94065

Telephone: (650) 801-5000

Email: andreaproberts@quinnemanuel.com

Email: briancannon@quinnemanuel.com

_____ Messenger

_____ US Mail

_____ Facsimile

 X ECF

Kathleen M. Sullivan (*pro hac vice*)

David Elihu (*pro hac vice*)

Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Ave., 22nd Floor

New York, NY 10010

Telephone: (212) 849-7000

Email: kathleensullivan@quinnemanuel.com

_____ Messenger

_____ US Mail

_____ Facsimile

 X ECF

William Price (*pro hac vice*)

Quinn Emanuel Urquhart & Sullivan, LLP

865 S. Figuera St., 10th Floor

Los Angeles, CA 90017

Telephone: (212) 443-3000

Email: williamprice@quinnemanuel.com

MicrosoftvMotoBreachofRANDCase@quinnemanuel.com

_____ Messenger

_____ US Mail

_____ Facsimile

 X ECF

DATED this 2nd day of August, 2013.

/s/ Emma Aubrey

EMMA AUBREY